



Testimony of the National Leased Housing Association

Presented By Terri Preston-Koenig

**Hearing on the Administration's Proposal to
Preserve and Transform Public and Assisted Housing
May 25, 2010**

**Committee on Financial Services
U.S. House of Representatives**

My Name is Terri Preston-Koenig. I am a Principal and Director of Community Development and Affordable Housing Services for Baker Tilly Virchow Krause, a CPA and consulting firm with offices in several cities. Previously, I was with the Wisconsin Housing & Economic Development Authority as Manager, Portfolio Development and Compliance. I am presently senior vice president of the National Leased Housing Association (NLHA) on whose behalf I am presenting testimony today.

NLHA has for the last 38 years represented the interests of developers, lenders, housing managers, housing agencies and others involved in providing federally assisted rental housing. Our members are primarily involved in the Section 8 housing programs – both project-based and tenant-based, as well as the Low Income Housing Tax Credit (LIHTC) program. NLHA's members provide or administer housing for over 3 million families.

Mr. Chairman, ranking Member Bachus, and Members of the Committee, thank you for the opportunity to testify on the Administration's proposal to radically overhaul all our assisted

housing programs. This is far-reaching and complex legislation. It can impact the viability and preservation of 2.6 million units in HUD assisted projects, affect the tenant-based voucher program that assists about 2.2 million poor households, and adversely impact the millions of poor persons, who may be in dire circumstances because they do not have affordable housing, and who seek to obtain federal housing assistance that is in limited supply.

NLHA has worked closely with Secretary Donovan during his previous time at HUD, while he was in New York City and presently. We want to be clear that we have the utmost respect for him and believe that HUD's proposal is generally well-intended. However, we believe the "Transformation" initiative to be ill-conceived and unrealistic. We provided our thoughts to HUD back in February (as part of an industry coalition letter) that such a proposal is too broad and recommended that HUD focus on preserving public housing instead. We have attached a copy of that letter as part of our testimony.

Scope of Initiative

HUD seeks to justify its sweeping proposal by asserting that it has too many separate rental housing programs ("at least 13" it says), each with its own rules, and that they should be consolidated into fewer programs. Among the 13 programs that HUD has identified that should be eliminated as separate programs are: HOPWA (or Housing Opportunities for People with AIDS); Shelter Plus Care for homeless persons; the use by States and localities of their HOME funds for tenant-based rental assistance; Section 202 assistance for elderly persons; and Section 811 assistance for disabled persons. These programs serve distinct populations. We are unsure what "consolidation" will do for the sponsors, or more importantly the people they serve.

Also included in this list of 13, is the Section 8 project-based program, which assists families in about 1.4 million units. This program is an extremely valuable long-term resource for

providing affordable rents for poor families and it is functioning well. It is beyond our understanding why HUD would propose to convert an established program into a new program with new rules.

HUD says “don’t worry”; conversion to the new program is voluntary. No owner would be required to convert. But if some owners convert and others do not, how is that streamlining if two programs replace one program? Any perceived “streamlining” could only be achieved if HUD were to induce conversion. If this proposal is enacted it would immediately destabilize the preservation of the Section 8 project-based inventory. The reason lenders and investors put their money into preservation of Section 8 projects is because they have confidence in the predictability and stability of the Section 8 project-based rules. Why should a lender make a long-term loan, on good terms, on a property with a current project-based HAP contract when there is a chance that the project will be converted to another program that has a more restrictive rent structure and has undesirable rules? And why should a Section 8 owner renew its contract if HUD makes it disadvantageous to remain under the Section 8 program even if the owner chooses not to convert to the new, less desirable program?

We urge the Committee to reduce the scope of this proposal to areas of recognized need where some good might be accomplished. The new program aimed at preserving public housing included in this legislation can provide an additional tool in helping some public housing agencies to rehabilitate and preserve their projects. The current mechanism for subsidizing operating deficits and capital repairs in public housing has not been successful in addressing the capital needs of numerous public housing properties because of insufficient appropriations. This housing is an important part of the nation’s low income housing stock and should be preserved. Conversion of the public housing subsidy mechanism to one based on a rental assistance contract

like the project-based Section 8 program with a specific subsidy amount should, if the rent structure in the contract is adequate, provide for long-term viability. The new subsidy structure also should be more successful in attracting private investment for capital repairs than the current structure, particularly if equity investors come back to the marketplace. We believe that instead of promoting a large scale transformation proposal that will be rejected by current project-based Section 8 owners and which does not contribute to preservation of that stock, HUD should request funding for a pilot program to preserve public housing that will enable the input of the public housing agencies, residents, investors and communities so that a workable framework for a permanent program can be established.

Rent Supplement/RAP Conversions

Another area where the proposed legislation addresses a real need is with respect to the expiration of subsidy contracts on Section 236 and Section 221(d)(3) properties that have rent supplement or RAP (rental assistance payments). This rental assistance was a precursor to Section 8 project-based assistance and most units were converted to Loan Management Set-Aside Section 8 many years ago. The contracts that did not convert to Section 8 when provided the opportunity cannot be renewed under current law, resulting in the units being lost to the subsidized inventory unless the projects are converted to either the proposed program in the Administration's bill or to the current Section 8 programs. Legislation has been offered as part of SEVRA and the preservation bill to preserve these units as affordable housing by permitting a transfer to the current Section 8 program, a solution we prefer to the Administration's proposal. We have attached language which would accomplish the objective without creating a "new" program. HUD's proposal to convert the remaining 27,000 units of Section 8 moderate rehabilitation is not necessary. These units can be preserved by providing budget-based rents

and by permitting the projects to renew contracts for terms beyond one-year. A provision pending in the preservation bill before this Committee would provide an adequate solution for the preservation of Section 8 moderate rehabilitation properties.

The Transformation legislation does not merely impose new rules on projects that agree to convert to the “new” rental assistance program, but also authorizes the imposition of new, uniform rules on all existing subsidized projects whether they are “voluntarily” converted or not. In addition, the legislation authorizes HUD to impose additional new rules as they may occur to HUD, including the ability to move a successful voucher program from its current administrator to a “regional” agency. Such broad authority is unwise and will be resisted by stakeholders. HUD should limit any “changes” to the public housing projects that choose to voluntarily convert to the “new” rental assistance model.

Mobility

First and foremost among these new rules is one giving a right to residents of units assisted by HUD to move from their units with a priority to receive a tenant-based voucher or monetary assistance comparable to a voucher. Under HUD’s proposed language, this right can be exercised when “available resources” exist, an undefined and unelaborated term.

As soon as this provision is enacted up to 2.6 million tenants will have a new right to move from their units with voucher assistance; PHAs administering voucher program will have new obligations; and owners will have new anticipated costs and even possible destabilization of their projects.

Who will know whether available resources exist with respect to a particular project? The legislation provides limited guidance – PHAs with voucher programs who also own converted projects or who administer contracts on converted projects must give one out of every

three turnover vouchers to a tenant who wishes to move from its subsidized unit. But this limitation applies only to a small part of the affected universe of projects and probably none for the first year.

Residents of Section 8 housing, and public housing, could claim that all turnover vouchers are available resources. Beyond that, it could be claimed that various reserve accounts in Section 8 projects, particularly residual receipts reserves that are intended to meet long term capital needs in existing Section 8 projects, are available resources. The situation would be chaotic under the language submitted by the Administration.

Even if these practical problems are corrected, resident choice is still a bad policy. “Resident choice” doesn’t mean that residents wait their turn for a voucher; it means they jump to the top of the voucher list and get the next available voucher (or one out of the next three available vouchers). It is inequitable and it is unsound housing policy to extend the time a poor person, perhaps in dire circumstances, has to wait to receive a voucher because a person already receiving a subsidized rent wants to move, for example, to a new tax credit project down the street because the bathrooms look better. Even a one out of three turnover policy results in a 50 percent increase in waiting time, from say 2 years to 3 years.

Moreover, it is not administratively feasible to draw a line between resident moves that seem to have a pressing rationale from those that do not, and HUD has not proposed one. To be fair to all the residents, move requests would have to be verified and that would be difficult. Both the verification process and the line between acceptable and unacceptable move motives would create resentments among residents.

With respect to the impact of resident choice on a project, tenant turnover that is substantially in excess of normal expected turnover can have serious cost consequences for the

project. In addition, prospective lenders who believe particular projects may be subject to excessive turnover may be reluctant to make capital repair loans for those projects. If HUD believes certain projects should not be preserved it should give all the tenants vouchers and no longer subsidize the project, rather than adopting a policy of resident choice that could over time lead to the same result.

The Administration's proposal also makes other changes that could be applied to Section 8 housing that does not convert to the "new" program including tenant organization rights, applicant and tenant procedural rights, civil penalties, enforcement actions and the effect of foreclosure or bankruptcy on the continuation of a housing assistance payment contract and a use agreement. We will submit specific comments on these provisions at a later time. Again, however, we urge the Committee to limit the provisions of this bill to the conversion of public housing, where PHAs agree and it make sense. Converted public housing projects could be subject to the same rules project-based Section 8 projects are subject to today with respect to the above subject areas and thus a new set of rule variations would be avoided.

Thank you for the opportunity to testify and I would be pleased to answer any questions.

February 24, 2010

The Honorable Shaun Donovan
Secretary
U.S. Department of Housing and Urban Development
Suite 10000
451 7th St., SW
Washington, DC 20410

Dear Secretary Donovan:

For too many years, the resources needed for quality affordable rental housing in this country have been lacking. The intentions outlined in HUD's FY2011 budget proposal to reassert Federal leadership on rental housing is welcomed by the undersigned national housing organizations. We understand the budget constraints facing this country, but too often it is the programs that serve the nation's most vulnerable citizens that are targeted when cuts need to be made. For the most part, HUD's budget proposal represents a sincere attempt to reverse that trend. However, we do have a number of concerns that we wish to share relating to the Department's "Transformation Rental Assistance" (TRA) initiative.

HUD's plan to streamline the myriad of Federal rental assistance programs into one type of rental assistance is well-intentioned, but we believe, ill-conceived. The current project-based rental assistance programs (PBRA) provide quality rental housing to over 1.3 million households. PBRA is understood and respected by the lending and investor communities resulting in the preservation and recapitalization of thousands of aging affordable rental units. It is inconceivable to us, particularly at a time when the financial market remains extraordinarily risk averse, that HUD would propose converting PBRA to an undefined hybrid of the project-based voucher program. The project based voucher program is intentionally small and limited in scope and such properties are often difficult to finance given the risks associated with that program.

The Department indicated in briefings on its TRA proposal that the initiative was designed to support the philosophy that "tenants should be able to vote with their feet." By making such statements, we believe HUD is creating the impression that the affordable housing stock is not in good condition and therefore tenants would want to flee. In fact, the HUD-assisted portfolio is in commendable physical condition; this is supported by the high REAC scores achieved by the majority of HUD-assisted properties. Further, any major proposal to change the existing PBRA program will affect the current comfort level of lenders and investors with the program, something we can ill afford in this current financing climate. As you know, lenders and investors can be wary of the appropriations risks related to rental assistance programs. Although subject to annual

appropriations, the PBRA program contracts are long-term, a fact that has been key to the ability of project owners to leverage this funding stream in support of recapitalization loans. The project-based voucher program's contracts, as well as the program's rent structures, are not equivalent, and the lending and investment community has not accepted them for underwriting purposes as they have PBRA contracts.

Our groups support the concept of providing Public Housing Authorities the option to voluntarily convert the current funding stream for their public housing into rental assistance, but HUD should look at the success of the PBRA model instead of the voucher model for the reasons noted above. The industry stands ready to work with HUD to refine proposals previously developed by the public housing community that will achieve the goal of preserving public housing.

We commend HUD for recognizing that the inventory of rent supplement and rental assistance programs (RAP) should be converted to Section 8. However, the preference would be to convert these programs to PBRA as proposed by the House Financial Services Committee in the draft preservation bill. As for the moderate rehabilitation program, the inventory is down to fewer than 30,000 from a one time high of 125 -140,000 units and yet, HUD policy is still thwarting their preservation. The renewed ability to use Low Income Housing Tax Credits with mod rehab has presented an opportunity to recapitalize the remaining inventory. HUD's refusal to renew these contracts for more than one year (subject to annual appropriations), while proposing conversion to project-based vouchers is wasting that opportunity.

We are unable to support the TRA initiative as outlined in the FY2011 budget proposal. We encourage HUD to focus on the very urgent needs of public housing, rather than create instability and uncertainty for the successful PBRA programs. We believe that HUD, in consultation with the public housing industry, will be able to develop a range of conversion options focused primarily on the preservation of existing public housing units. Our organizations are committed to working with the Department on this important endeavor.

Sincerely,

American Association of Homes and Services for the Aging (AAHSA)

Council for Affordable and Rural Housing (CARH)

Institute of Real Estate Management (IREM)

Institute for Responsible Housing Preservation (IRHP)

National Apartment Association (NAA)

National Association of Affordable Housing Lenders (NAAHL)

National Affordable Housing Management Association (NAHMA)

National Association of Homebuilders (NAHB)

National Association of Housing and Redevelopment Officials (NAHRO)

National Leased Housing Association (NLHA)

National Multi Housing Council (NMHC)

CONVERSION OF OLD ASSISTANCE CONTRACTS - Explanation

In the 1980s HUD offered at least twice to convert rent supplement and 236 RAP contracts (rental assistance payments pursuant to which up to 20% generally of the units can receive deep subsidy payments) to section 8 loan management set-aside contracts. While many owners accepted these conversions, a significant number did not. One estimate is that about 36,000 units remain under the old programs. These contracts are getting closer to maturity, and can be preserved for longer periods through conversion to section 8. Also, the rent supplement contracts in HUD-insured projects have not been adjusted for inflation since the 1980s and therefore the funds available in the contracts can serve far fewer units than the number of units specified in the contracts.

Conversion of all contract units to section 8 will both increase the number of assisted units and permit their availability beyond their current expiration dates. The section authorizes appropriations for the section 8 loan management set-aside program, which has been unused for several years but which operated effectively in the earlier conversions. The initial term of the section 8 contract would be the remaining term of the rent supplement or RAP contract. Any time after the initial year of a converted contract, an owner could seek renewal of the contract under section 524, the section 8 renewal statute, if the contract term is extended 5 years beyond its initial term. An initial conversion under section 524 would not be feasible for some projects as it might require a rent reduction to a market level. At the end of the initial loan management set-aside contract, renewals would occur under section 524. However, at that time the section 8 rents in the projects should not be subject to a market standard since, in most cases, the HUD-insured mortgage also would have matured, and it is the HUD-insured mortgage that triggers reductions to market rent levels.

It should be recognized that the initial term of the converted contract may be extended indefinitely and is expected to in many cases, particularly if a project is transferred to a nonprofit or public purchaser

CONVERSION OF OLD ASSISTANCE CONTRACTS – Suggested Language

Notwithstanding any other provision of law and subject to the availability of appropriations, the Secretary of Housing and Urban Development shall, at the request of a project owner with a contract under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) or a contract under section 236(f)(2) of the National Housing Act (12 U.S.C. 1715-z-1), submitted within one year after the enactment of this section, convert such contract to project-based loan management assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f). The loan management assistance contract shall have a term at least equal to the remaining term of the converted contract. After the initial year, a loan management assistance contract may, at the option of the project owner, be converted to a renewal contract under section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note), subject to the availability of appropriations, if the project owner agrees to a contract term which extends 5 years beyond the remaining term of the loan management assistance contract.